

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

PEPO HERD EL, a/k/a,  
PEPO WAMCHAWI HERD,

Defendant

CRIMINAL No. 21-CR-10045-ADB

**GOVERNMENT'S STATUS REPORT**

The parties last appeared on September 12, 2022. At that conference, defense counsel relayed that her client had not yet reviewed the report written by his mental health care provider. Defense counsel requested a continuance so that the defendant would have a chance to receive and review a copy of the report.

During the week of October 7, 2022, defense counsel spoke with her client and learned that he had not received the report that she had mailed. As of October 13, 2022, defense counsel had re-mailed a copy but did not know whether the defendant had received it. Defense counsel has requested that the defendant be present via video for tomorrow's status conference.

On October 7, 2022, the government spoke with the defendant's health care provider at the Federal Medical Center in Butner, North Carolina. She said that having copies of the defendant's historical medical records could be helpful in specifying his diagnosis and in creating a treatment plan, a necessary prerequisite for the analysis prescribed by *Sell v. United States*, 539 U.S. 166 (2003). For example, she said it could be helpful to know what prior medications the defendant has taken and whether those led to favorable outcomes, side effects, or allergic reactions.

However, the defendant's Butner health care provider has not yet received those records. Previously, on April 7, 2021, U.S. Magistrate Judge Dein issued an order for these records to be produced to the defense and to the local doctor who evaluated the defendant prior to his placement at Butner. Butner officials attempted to request a copy of these records from defense counsel on May 25, 2022, but the email address used was incorrect by one character: The hospital sent its request to "Julie\_Ann\_Olson@fd.org" but should have used "Julie-Ann\_Olson@fd.org." For this reason, defense counsel never received the request and government counsel, who was not copied on it, was unaware of the request until October 7.

The government has since inquired whether defense counsel is willing to send a copy of her materials to the Butner mental health provider. Defense counsel said she was "not in a position" to do so. Government counsel has since spoken with Judge Dein's clerk. He indicates that he still has copies of at least two of the three kinds of medical records previously produced. He is attempting to locate the third. At Thursday's status conference, the government will request that this court order that the records be produced to the defendant's Butner doctors.

The government has not yet received a definitive response on whether the defendant will oppose a motion filed pursuant to *Sell*. Given that the defendant's Butner health care providers have not yet received his historical medical records, the government plans to delay filing such a motion until the Butner doctors can review those records and better determine what an appropriate treatment plan might include.

Respectfully submitted,

RACHAEL S. ROLLINS  
United States Attorney

By: /s/ Amanda Beck  
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**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

/s/ Amanda Beck  
AMANDA BECK  
Assistant United States Attorney

Date: October 19, 2022